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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 638

ARGUS HOSIERY MILLS, INC., PETITIONER,

VS.

RENSO ROBERTSON, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

and

BRIEF IN SUPPORT THEREOF.

RUSSELL R. KRAMER,
Attorney for Petitioner.

CHARLES E. MCNABB,
J. W. BAKER,
POORE, KRAMER & COX,
Of Counsel.

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ARGUS HOSIERY MILLS, INC., PETITIONER,

VS.

RENSO ROBERTSON, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Argus Hosiery Mills, Inc., which was the appellee in the above styled cause in the Circuit Court of Appeals for the Sixth Circuit, respectfully shows to Your Honors:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is an action brought by respondent, an employee of petitioner, against petitioner, in the United States District Court for the Eastern District of Tennessee, for the purpose of recovering back wages and damages resulting from an alleged violation of the Fair Labor Standards Act of 1938 (Ch. 676, 52 Stat. 1060; U. S. C., Tit. 29, Sec. 201, *et seq.*), the suit being brought pursuant to the provisions of Section 16 (b) of said Act.[1]

Respondent averred that from October 24, 1938, until a date just prior to the filing of the complaint he had been employed in petitioner's hosiery factory at Sevierville, Tennessee, and that petitioner in the conduct of its business produced goods for interstate commerce.[2]

While respondent alleged in his complaint that the action was brought not only for himself, but on behalf of approximately 140 other employees similarly situated, that is, producers of hosiery at petitioner's factory located at Sevierville, Tennessee, respondent did not name any of such other employees, nor did he specify the number of hours worked by, or amounts claimed to be due, such employees.[3]

The complaint alleged further that the amount sought by this respondent and all other employees similarly situated was in excess of three thousand dollars ($3,000), exclusive of court costs and attorney's fees. The maximum amount which could be recovered by respondent under the allegations of the complaint, however, was less than that sum, it being actually eight hundred seven and 46/100 Dollars ($807.46).[4]

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[1]Record p. 1.

[2]Record p. 2.

[3]Record pp. 3-4.

[4]Record pp. 2-3.

Petitioner moved to dismiss the complaint on the ground that although the matter in controversy arose under a law of the United States, the court lacked jurisdiction because the amount in controversy was less than three thousand dollars ($3,000), exclusive of interest and costs.[5]

Petitioner's motion to dismiss was sustained by the trial court, the respondent's motion to strike said motion to dismiss being overruled,[6] and a memorandum opinion was filed thereon.[7]

Respondent filed a petition to rehear, contending that the court had jurisdiction to determine the controversy irrespective of the amount involved, because; 1) the matters complained of arose under a law of the United States regulating commerce, and, hence, the district court had jurisdiction under U. S. C., Tit. 28, Sec. 41 (8); and (2) the recovery sought was in effect the enforcement of a penalty provided for by the Fair Labor Standards Act of 1938 and, therefore, the district court had jurisdiction under U. S. C., Tit. 28, Sec. 41 (9).[8]

The trial court denied respondent's petition to rehear[9] and filed a memorandum opinion thereon.[10]

The case was taken by the appeal of respondent to the United States Circuit Court of Appeals for the Sixth Circuit on the theory that the district court had erred in overruling respondent's petition to rehear.[11]

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, filed a

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[5]Record p. 6.

[6]Record p. 9.

[7]Record p. 7.

[8]Record p. 10.

[9]Record p. 11.

[10]Record p. 12.

[11]Record pp. 14, 15, 16, 17.

brief in the Circuit Court of Appeals as *amicus curiae*, but only in support of the first ground of respondent's petition to rehear.

In an opinion rendered by the Circuit Court of Appeals on June 25, 1941, at the conclusion of which the judgment of the lower court was reversed and the case remanded for further proceedings, it was held that while the district courts of the United States do not have jurisdiction of employees' suits under the Fair Labor Standards Act of 1938 (Ch. 676, 52 Stat. 1060; U. S. C., Tit. 29, Sec. 201 *et seq.*) for their unpaid wages and an additional equal amount as liquidated damages, on the theory that such suits are for the enforcement of penalties incurred under a law of the United States, yet the district courts do have jurisdiction of such suits because they arise under a law regulating commerce within the meaning of U. S. C., Tit. 28, Sec. 41 (8).[12] The court held that it was unnecessary to consider whether in representative suits under the Fair Labor Standards Act of 1938 the claims of two or more employees could be added to attain the jurisdictional amount of more than three thousand dollars ($3,000) exclusive of interest and costs.[13]

II.

THE BASIS UPON WHICH THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

This Court has jurisdiction to consider and grant this petition pursuant to *Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938, U. S. C., Tit. 28, Sec. 347.*

The judgment of the Circuit Court of Appeals for the Sixth Circuit which is sought to be reviewed was rendered June 25, 1941.[14]

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[12]Record pp. 21, 22, 23.

[13]Record p. 23.

[14]Record p. 20.

III.

THE QUESTIONS PRESENTED.

1. Do the district courts of the United States have jurisdiction of employees' suits brought under Section 16 (b) of the Fair Labor Standards Act of 1938 (Ch. 676, 52 Stat. 1060; U. S. C., Tit. 29, Sec. 201 *et seq.*) for their unpaid minimum wages, or their unpaid overtime compensation, or both, as the case may be, and an additional equal amount as liquidated damages, upon the theory that such suits arise under a law regulating commerce, and, therefore, fall within U. S. C., Tit. 28, Sec. 41 (8)?

2. In representative suits brought pursuant to Section 16 (b) of the Fair Labor Standards Act of 1938 (Ch. 676, 52 Stat. 1060; U. S. C., Tit. 29, Sec. 201 *et seq.*) may the claims of two or more of the employees be added to attain the jurisdictional amount of more than three thousand dollars ($3,000), exclusive of interest and costs?

IV.

THE REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The questions involved in this case are questions of Federal law which have not been, but should be, settled by this Court.

2. It is vitally necessary that the jurisdiction of the district courts of the United States be declared with reference to employees' suits brought under Section 16 (b) of the Fair Labor Standards Act of 1938 (Ch. 676, 52 Stat. 1060; U. S. C., Tit. 29, Sec. 201 *et seq.*) in order to still the confusion which now exists among the courts on that question.

3. The decision of the Circuit Court of Appeals is a departure from the strict construction which this Court has always given the familiar statute (U. S. C., Tit. 28, Sec. 41) which governs the jurisdiction of district courts of the United States.

4. The decision of the Circuit Court of Appeals is contrary to the intent of the Congress in providing that employees' suits for back wages and damages under the Fair Labor Standards Act of 1938 "may be maintained in any court of competent jurisdiction" (Sec. 16 (b), Ch. 676, 52 Stat. 1060; U. S. C., Tit. 29, Sec. 201 *et seq.*). This decision would allow removal of such suits, no matter how small, from the state forum chosen by the employee to a distant district court of the United States.

5. There is a conflict and confusion among the decisions of the district courts on the question of removability of cases instituted in the state courts for collection of minimum wages or overtime compensation due because of the provisions of the Fair Labor Standards Act of 1938.[15]

V.

In his complaint, the respondent Robertson did not aver that he was engaged in commerce or in the production of goods for commerce, and thus failed to state a cause of action under the Fair Labor Standards Act of 1938.

VI.

Wherefore, your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Sixth Circuit, demanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals for the Sixth Circuit had in the said case therein entitled, *Renso Robertson, appellant,* v. *Argus Hosiery Mills, Inc., appellee,*" to the end that this cause may be reviewed and deter-

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[15]See **Ricciardi v. Lazzera Pk. Corp.**, D. C. N. J., 1940, 32 F. Supp. 956, where court held such suit is removable and **Wingate v. General Auto Sales Co.**, D. C. W. D. Mo., Aug., 1941, ... F. Supp. ....., where court held such suit is not removable.

mined by this Court as provided by the statutes of the United States; and that the judgment herein of the said Circuit Court of Appeals be reversed by this Court.

Petitioner prays for such other relief as this Court may deem proper.

Dated September 22, 1941.

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By RUSSELL R. KRAMER,
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